

REMARKS

Upon entry of this Amendment, claims 24-28 and 30-56 remain pending with claims 30-56 being withdrawn. Claims 19-23 and 29 are canceled. No new matter is introduced as a result of this Amendment.

Applicants note the Examiner lined through a citation listed on an Information Disclosure Statement (IDS) because the particular citation was purportedly not properly descriptive. Applicants submit herewith a new copy of the cited document as well as a new IDS including the document's proper citation. The Examiner's consideration of this document would be greatly appreciated.

Rejections under 35 U.S.C. § 103

Claims 24-28 were rejected under 35 U.S.C. 103(a) as purportedly obvious based on Speer et al. (U.S. Pat. No. 5,529,833) in view of Christiani et al. (U.S. Pat. No. 5,747,560). Applicants respectfully traverse.

Independent claim 24 (from which claims 24-28 depend) concerns a multilayer article. The article includes at least one layer having at least one polyamide, at least one oxygen scavenging system, and platelet particles from at least one layered silicate material.

The combined teachings of Speer and Christiani fail to teach or fairly suggest a multilayer article wherein at least one layer includes at least one polyamide, at least one oxygen scavenging system, and platelet particles. As conceded in the Office Action, Speer fails to disclose an oxygen barrier layer that includes platelet particles derived from at least one layered silicate material. Applicants further points out that, as explained in the Office Action, Speer describes that the article can be multi-layered with an oxygen barrier layer being placed adjacent the oxygen-scavenging layer. In other words, according to the teachings of Speer, Speer's article includes one layer having a oxygen scavenging system in a diluent such as PET and a second separate layer that includes polyamide to form an oxygen barrier. Speer thus fails to teach or fairly suggest a multi-layer article wherein the one polyamide, oxygen scavenging system, and platelet particles are in a single layer.

Christiani fails to remedy the deficiencies of Speer discussed above. Speer is cited for describing a polyamide having dispersed therein swellable intercalated layered materials. Hence, the combined teachings of Speer and Christiani would at most result in a multilayered article having an oxygen barrier layer composed of polyamide and swellable intercalated layered materials placed adjacent to an oxygen-scavenging layer composed of PET and a oxygen scavenger. Nothing in the combined teachings of these two documents would teach or suggest to one of ordinary skill in the art to produce a multi-layered article having an oxygen scavenging system and platelet particles in the same layer. Hence, the combined teaching of Speer and Christiani fail to render the claimed invention obvious.

In view of the above remarks, Applicants respectfully request this rejection be reconsidered and withdrawn.

Claim 20 was rejected under 35 U.S.C. 103(a) as purportedly obvious based on Speer et al. view of Christiani, and further in view of Shaler, Jr. (U.S. Pat. No. 3,267,065). Claim 20 has been canceled by this Amendment thereby rendering this rejection moot.

Rejection under Double Patenting

Claims 24-28 were rejected on the ground of nonstatutory obviousness-type double patenting based on claims 1-17 of U.S. Pat. No. 6,777,479.

Claims 24-28 were rejected on the ground of nonstatutory obviousness-type double patenting based on claims 1-22 of U.S. Pat. No. 6,610,772.

Claims 24-28 were rejected on the ground of nonstatutory obviousness-type double patenting based on claims 1-47 of U.S. Pat. No. 6,455,620.

These three rejections are addressed together as similar issues apply to each. Moreover, Applicants respectfully traverse each of these three rejections.

The present application is a divisional of parent application no. 09/630,517 ('517), now U.S. Pat. No. 6,777,479. See Preliminary Amendment and Utility Patent Application Transmittal filed with the present application on January 15, 2004. The Preliminary Amendment indicates that the claims of the present application were

restricted and non-elected in the parent application '517. The MPEP states, "A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application." See 35 U.S.C 121. Hence, the double patenting rejection based on U.S. Pat. No. 6,777,479 is improper.

Applicants now address the rejections based on U.S. Pat. No. 6,610,772 and U.S. Pat. No. 6,455,620. The Restriction Requirement in the parent application '517 stated that the multi-layered article of claims 19-29 is distinct from the composition of claims 1-18 (which were elected and prosecuted in the parent application '517) because the composition of claims 1-18 did not have to be used in the multilayered article of claims 19-29. As conceded in the Office Action, the claims of the '772 and '620 patents are not drawn to multi-layered articles. Hence, for at least the same reasons as stated in the Restriction Requirement, the multi-layered article of the present claims is distinct from the claimed compositions of the '772 and '620 patents. Reconsideration and withdrawal of each of the above three rejections is thus respectfully requested.

In summary, Applicants believe the application to be in condition for allowance. Accordingly, the Examiner is respectfully requested to reconsider the rejections, enter the above amendment, remove all rejections, and pass the application to issuance.

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Respectfully submitted,

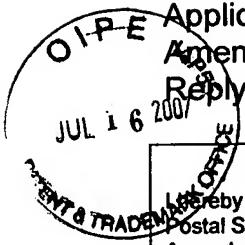


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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Mail Stop Amendment, P. O. Box 1450, Alexandria, VA 22313-1450.

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Date